

CHAPTER NO. 36

SENATE BILL NO. 546

By Fowler

Substituted for: House Bill No. 1018

By Wood

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 50, Part 15, relative to educational records as evidence.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 49-50-1502, is amended by deleting the section in its entirety and by substituting instead the following:

As used in this part, unless the context otherwise requires:

(1) "Custodian" means the educational record practitioner and the administrator or other chief officer of an educational institution in this state and its proprietor, as well as their deputies and assistants, and any other persons who are official custodians or depositories of records;

(2) "Educational institution" means a public, private, or parochial school providing education to students in the twelfth grade or below or a public or private post-secondary institution providing education to students at a level above the twelfth grade;

(3) "Eligible student" means a student who has reached eighteen (18) years of age or is attending a post-secondary institution;

(4) "Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian; and

(5) "Student record" means an educational record that is directly related to a student and is maintained by an educational institution or by a party acting for the institution.

SECTION 2. Tennessee Code Annotated, Section 49-50-1503(a), is amended by deleting the subsection in its entirety and by substituting instead the following:

(a) Except as provided in § 49-50-1508, when a subpoena duces tecum is served upon a custodian of records of any educational institution in this state in an action or proceeding in which the educational institution is neither a party nor the place where any cause of action is alleged to have arisen, and such subpoena requires the production of all or any part of the records of the educational institution or of the educational institution's present or past student, it shall be sufficient compliance therewith if the custodian or other officer of the educational institution within twenty (20)

days after being served with a subpoena duces tecum, shall, either by personal delivery or certified or registered mail, file with the court clerk or the officer, body, or tribunal conducting the hearing, a true and correct copy (which may be a copy reproduced on film or other reproducing material by microfilming, photographing, photostating, or other approximate process, or a facsimile, exemplification, or copy of such reproduction or copy) of all records described in such subpoena. Before complying with a subpoena for student records, the educational institution shall make a reasonable effort to notify the parent or the eligible student of the subpoena, so that the parent or eligible student may seek protective action, unless the subpoena was issued by a federal grand jury or for a law enforcement purpose and the court or other issuing agency ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

SECTION 3. Tennessee Code Annotated, Section 49-50-1504, is amended by deleting the section in its entirety and by substituting instead the following:

The copy of the records shall be separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action, name of witness, and date of subpoena clearly inscribed thereon. The custodian of the record shall affix to the sealed envelope or wrapper containing student records an affidavit stating that each eligible student or parent of a student whose records are within the sealed envelope or wrapper was notified of the subpoena prior to compliance and the date on which such eligible student or parent was notified, unless the subpoena was issued by a federal grand jury or for a law enforcement purpose and the court or other issuing agency ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed. The sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and directed as follows:

(1) If the subpoena directs attendance in court, to the clerk of such court or to the judge thereof;

(2) If the subpoena directs attendance at a deposition, to the officer before whom the deposition is to be taken, at the place designated in the subpoena for the taking of the deposition, or at such officer's place of business; and

(3) In other cases, to the officer, body, or tribunal conducting the hearing, at a like address.

SECTION 4. Tennessee Code Annotated, Section 49-50-1505, is amended by deleting the section in its entirety and by substituting instead the following:

(a) Unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of records shall remain sealed and shall be opened only at the time of trial, deposition or other hearing, upon the direction of the judge, court, officer, body, or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at such trial, deposition, or hearing. Before directing that such inner envelope or wrapper be opened, the judge, court, officer, body, or tribunal shall first ascertain that:

(1)(A) The custodian's affidavit attesting notification of each eligible student or parent of a student whose records are contained within the sealed envelope or wrapper is affixed;

(B) The eligible student or parent has had sufficient time in which to move to quash the subpoena; and

(C) No motion to quash the subpoena is pending; and

(2)(A) The records have been subpoenaed at the instance of a student or parent of a student involved or such student's or parent's counsel of record;

(B) The student or parent involved or someone authorized in such student's or parent's behalf to do so for such student or parent has consented thereto and waived any privilege of confidentiality involved; or

(C) The records have been subpoenaed in a criminal proceeding.

Records that are not introduced in evidence or required as part of the record shall be returned to the person or entity from whom they were received.

(b)(1) Upon receipt of a subpoena, the custodian shall send the records to the attorney responsible for the issuance of the subpoena at the place, and on or before the date designated in the subpoena, if such subpoena:

(A) States conspicuously on its face that the records are required in a tort action or domestic relations proceeding in which the student or parent has raised the issue of the student's education level, performance, or attendance; and

(B) Directs the custodian's attendance at a deposition.

(2) Before opening the sealed records, the attorney responsible for the issuance of the subpoena shall ascertain that:

(A) The custodian's affidavit attesting notification of each eligible student or parent of a student whose records are contained within the sealed envelope or wrapper is affixed;

(B) Each eligible student or parent has had sufficient time in which to move to quash the subpoena; and

(C) No motion to quash the subpoena is pending.

The attorney responsible for the issuance of the subpoena need not meet the requirements of subsection (a)(2), if the attorney furnishes a copy of the records to the adversary party or their counsel.

SECTION 5. Tennessee Code Annotated, Section 49-50-1506, is amended by deleting the language "the school" wherever it appears and by substituting instead the language "the educational institution".

Tennessee Code Annotated, Section 49-50-1506, is further amended by deleting in (a) (3) the language "the school's" and by substituting instead the language "the educational institution's".

SECTION 6. Tennessee Code Annotated, Section 49-50-1509(a), is amended by deleting the language "public, private or parochial school" and by substituting instead the language "educational institution".

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.

**PASSED: April 7, 2003**



JOHN S. WILDER  
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

**APPROVED this 22<sup>nd</sup> day of April 2003**



PHIL BREDESEN, GOVERNOR